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EX PARTE

September 29, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: CC Docket No. 95-116 -- Telephone Number Portability Cost Recovery

Dear Mr. Caton:

SBC, AT&T, and others have gone on record as stating that the FCC has "intrastate" and "interstate" jurisdiction over number portability cost recovery. [1] Through Section 251 (e) of the Telecommunications Act of 1996 (the "1996 Act") and under the 8th Circuit's recent rulings, the Commission has a "direct and unambiguous" grant of interstate and intrastate authority to determine a "competitively neutral" means of allocating number portability costs.

However, allocation without recovery—whether from carriers or from consumers—is meaningless, and the Commission's own standards for competitive neutrality cannot be met without cost recovery.

The Commission fully exercised its authority under Section 251(b)(2) to prescribe detailed requirements for number portability implementation. It is clear that Congress' grant of authority is supported by the policies that the Commission cited in the First Report and Order. The Commission should also exercise its authority under Section 251 (e) to conclude in this proceeding—consistently with the determinations in the First Report and Order—that "competitive neutrality" cannot be met without providing regulated carriers the ability to recover the costs they incur to implement number portability (both Type I and Type II costs) with the same ease as non-price regulated carriers.

Accordingly, the Commission should implement a federal cost recovery mechanism.

SBC proposed in its comments and reply comments in this proceeding a federal, mandatory, uniform, end-user charge paid by customers on the basis of "elemental access lines." SBC still contends that this methodology is the most competitively neutral mechanism.

[1] CTIA contends further that the Commission has exclusive jurisdiction over CMRS interconnection and rates and, therefore, CMRS number portability cost recovery.

At the same time, this mechanism is somewhat administratively complex. As an alternative that SBC believes meets the Commission's test of competitive neutrality, SBC suggests that all carriers should be permitted, but not required, to recover their Type I and Type II costs through new service, Part 69 rate elements. This methodology uses a retail customer charge and query-based rate elements, as proposed by Southwestern Bell Telephone Company ("SWBT") and Pacific Bell in their recent tariff filings.

As a final alternative, should the Commission determine to exercise its authority over intrastate cost recovery by giving the States specific direction in implementing cost recovery, SBC suggests that the Commission require that interstate and intrastate costs be recovered through complementary mechanisms. Interstate costs should be recovered by carriers through federal new service rate elements, such as those SWBT and Pacific Bell filed, and the States should be directed to permit carriers to recover intrastate costs via a parallel intrastate mechanism implementing a combination of new service offerings comparable to SWBT's and Pacific Bell's.

Finally, SBC urges the Commission to make its cost recovery mechanism effective no late that January 1, 1998, so that carriers can recover their costs somewhat contemporaneously with their being incurred.

Attached you will find a draft of portions of orders that could be used to support fully interstate recovery or recovery partly in the he interstate and partly in the intrastate jurisdiction. The arguments set forth in the attachment reasonably support either of the new service rate element its original proposal is the single most competitively neutral, other methods, properly implemented, could also meet the FCC's test of competitive neutrality.

Sincerely,

Dale Robertson

Attachments

cc: Tom Boasburg
Richard Metzger
James Schlichting

I. "NUMBER PORTABILITY" IS A NEW SERVICE THAT PERMITS ALL CUSTOMERS OF ALL CARRIERS TO REACH CUSTOMERS IN "PORTABLE" NXXS

"Number portability" is defined in the 1996 Act as "the ability of users of telecommunications service to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[1] Although number portability is often thought of as a new service intended to allow a consumer to switch from one facilities-based local exchange carrier ("LEC") to another, number portability functionality actually serves not only the porting customer, but all customers. Number portability is not required for an end user to retain outbound calling functionalities. With or without number portability, an end user can change facilities-based LECs without losing the ability to place local or long-distance calls or to connect to the Internet, for example. However, number portability, when implemented, will permit customers to change facilities-based carriers without the disincentive of having to change telephone numbers. Moreover, it will allow customers who do not change carriers to call customers they know who do change carriers without the cost or inconvenience of locating or learning a new number for the other customer.

Number portability is a functionality that permits all end user customers of all telecommunications carriers to place calls to ported telephone numbers, whether the call originates inside or outside of areas in which numbers are being ported. Our deployment schedule and technical parameters for number portability are demanding. As a practical matter, the industry has determined to deploy the local routing number ("LRN") method of number portability because it is the only method in a stage of development that is advanced enough to have a prospect of meeting our deployment schedule. When deployed, the LRN functionality is required to complete all calls to "portable" NXXs as soon as the first customer of an incumbent LEC changes to a facilities-based competitive LEC. Ten thousand numbers are affected as soon as one customer ports his or her

[1] 47 U.S.C. § 153 (30).

telephone number. The functionality is required not only for the porting customer, but for all customers to place calls to customers in "portable" NXXs.

Because "number portability" within the terms of the 1996 Act is "service provider" number portability, rather than "location" portability, thereby limiting to a local area the geographic extent to which a number can be ported, it is often called "local number portability."[2] "Local number portability" is, however, a misnomer in many respects. All interswitch calls to an end user in a portable NXX rely upon the massive database and signaling infrastructure carriers will construct to implement number portability to have the call completed. Whether the calls are local, intraLATA, interLATA, or CMRS, for example, the functionality is required if the destination telephone number resides in a "portable" NXX. Thus, while LRN is the "long-term" solution that the industry has adopted as the only one that meets the Commission's performance criteria for long-term number portability, it is anything but limited to "local" calling.

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[2] Although the 1996 Act permits no physical movement of a customer from the premises at which the ported telephone number resides, the Commission's Order permits customers to move locations as well as facilities-based service providers when porting their telephone numbers, provided the move is within a rate center. Second Report and Order at ¶ 54 (adopting Architecture and Administrative Plan For Long-term Number Portability). "Number portability," as defined in the 1996 Act, is distinct from "interim" number portability. Interim number portability, while assisting facilities-based competition, relies upon technology and methods that fail to meet the statutory definition of "number portability."

II. THE COMMISSION HAS AMPLE SUPPORT IN THE TELECOMMUNICATIONS ACT FOR THE EXERCISE OF PLENARY JURISDICTION.

We conclude that Sections 251(b) and (e)(2) contain substantially similar requirements that the Commission determine the means of number portability implementation. Under Section 251(b)(2), LECs are to provide, "to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Similarly, Section 251(e)(2) requires that the costs of number portability be "borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." Accordingly, we construe the extent of our intrastate jurisdiction as substantially similar under both sections.

This conclusion is supported by two recent opinions of the United States Court of Appeals for the Eighth Circuit. In its review of the Interconnection Order in Iowa Utilities Board, et al., v. Federal Communications Commission, et al., the court cited Sections 251(b)(2) and (e) as provisions in the Act that grant the Commission "direct and unambiguous . . . intrastate authority." Iowa Utilities Board v. FCC, No. 96-3321 and consolidated cases, Slip. Op. at 103-05, nn. 10, 12 (8th Cir. July 18, 1997) (emphasis added). In reviewing the Commission's intraLATA dialing parity rules contained in the Commission's Second Interconnection Order, the Eighth Circuit again pointed to Section 251(e) as an example of intrastate authority appropriately delegated to the Commission. California v. FCC, No. 96-3519 and consolidated cases, Slip Op. at 15-16 (8th Cir. August 22, 1997).[3]

As with its exercise of authority in determining the technical requirements, cost structure, and schedule for implementing LNP under Section 251(b)(2), the Commission has, therefore, a "direct and unambiguous grant of intrastate authority" to determine how the costs

[3] The California court also had an opportunity to address directly the meaning of competitively neutral allocation in Section 251(e), but did not do so based upon ripeness concerns. Slip Op. At 18-20.

of number portability are to be allocated among carriers under Section 251(e)(2).

Moreover, we conclude that this authority also encompasses recovery of the costs of number portability. This affirms the general approach we took to the treatment of interim number portability costs in the First Report and Order. In the First Report and Order, we determined that Section 251(e)(2) is applicable to the recovery of interim number portability costs --not just its allocation among carriers. This is the case because were we merely to address allocation, without recovery, we could not ensure that the competitive neutrality standard of Section 251(e)(2) has been satisfied.[4]

In the context of interim number portability, we concluded that "section 251(e)(2) gives us specific authority to prescribe pricing principles that ensure that the costs of number portability are allocated on a 'competitively neutral' basis." First Report and Order at para. 126 (emphasis added).

We further concluded that under the authority set forth in Section 251(e)(2), we should "adopt guidelines that the states must follow in mandating cost recovery mechanisms for currently available number portability mechanisms." First Report and Order at para. 127. Though we permitted flexibility to the States, we also set forth a stringent competitive neutrality definition, which in concert with the requirement that number portability costs be recovered from all telecommunications carriers, eliminated many of the cost recovery mechanisms States had used for the interim number portability options required in our Interconnection Order. States, of course, are free to prescribe cost recovery mechanisms for any additional INP options they choose to require.[5]

[4] The California court recognized this principle in its recent Order. California, Slip Op. At 19-20.

[5] E.g., incremental cost based rates for remote call forwarding.

As a legal and policy matter, therefore, to exercise responsibly our Section 251(e)(2) authority, we must in this proceeding determine, define, and prescribe an efficient and immediate mechanism for the recovery of number portability costs.

* * *

III. AS A POLICY MATTER THE COMMISSION SHOULD EXERCISE ITS PLENARY JURISDICTION OVER NUMBER PORTABILITY COST ALLOCATION AND RECOVERY

As we determined in the First Report and Order, number portability is a prerequisite to facilities-based local competition. Therefore, we conclude that we should not delegate to the States our clear responsibility to prescribe number portability requirements—including, perhaps most importantly, cost recovery. As we said in the First Report and Order, "We believe that Congress has determined that this Commission should develop a national number portability policy and has specifically directed us to prescribe the requirements that all local exchange carriers, both incumbents and others, must meet to satisfy their statutory obligations . . .. Consistent with the role assigned to the Commission by the 1996 Act, the record developed in this proceeding overwhelmingly indicates that the Commission should take a leadership role with respect to number portability. We, therefore, affirm our conclusion that we should take a leadership role in developing a national number portability policy. . . . Congress[] mandate[d the FCC] to prescribe requirements for number portability." First Report and Order at para. 36.

We also pointed out in the First Report and Order that we "believe it is important that we adopt uniform national rules . . . [because of the impact of number portability] on interstate, as well as local, telecommunications services." As we concluded, "allowing number portability to develop on a state-by-state basis could potentially thwart the intentions of Congress in mandating a national number portability policy, and could retard the development of competition in the provision of telecommunications services." First Report and Order at para. 37.

These determinations are equally applicable to our duty under Section 251(e)(2).

Ultimately, all customers in all areas of the country--whether or not they choose to change local service providers or to port their telephone numbers--will benefit from the innovation and lower prices that will result from thriving, facilities-based, local service competition. Number portability will help to speed these developments.

As we concluded in the First Report and Order, we agree with that portion of the legislative history of the 1996 Act that finds that number portability is necessary for competition. As we pointed out, "to the extent that customers are reluctant to change service providers due to the absence of number portability, demand for services by new service providers will be depressed. This could well discourage entry by new service providers and thereby frustrate the pro-competitive goals of the 1996 Act." First Report and Order at para. 31. See also para. 2.

In addition, we concluded in the First Report and Order that we "have a significant interest in promoting the nationwide availability of number portability due to its impact on interstate telecommunications . . . based [upon] four grounds: (1) our obligation to promote an efficient and fair telecommunications system; (2) the inability to separate the impact of number portability between intrastate and interstate telecommunications; (3) the likely adverse impact that deploying different number portability solutions across the country would have on the provision of interstate telecommunications services; and (4) the impact that number portability could have on the use of the numbering resource, that is, ensuring that the use of numbers is efficient and does not contribute to area code exhaust." First Report and Order at para. 32.

Because all customers who place calls to portable NXXs require number portability technology to reach those persons, because in our view number portability is a prerequisite to the full, facilities-based competition that Congress sought, and because number portability costs are to be "borne by all telecommunications carriers on a competitively neutral basis," we conclude that all telecommunications carriers, whether operating in or out of areas in which number portability technology is operational, must be allocated a portion of number portability costs.

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IV. THE EXERCISE OF PLENARY JURISDICTION IS REASONABLE AND APPROPRIATE AND SUPPORTED BY THE RECORD IN THIS DOCKET.

As we have noted, number portability has ubiquitous, "nationwide" impact; virtually all calls require the use of the system of databases and signaling systems. The service itself is not one that is provided only to those consumers that port their telephone numbers to facilities-based carriers. Instead, number portability mechanisms permit all customers of N-1 carriers to reach consumers whose telephone numbers have been ported. In addition, all "N-1" telecommunications carriers (ILECs, CLECs, IXCs, cellular and PCS providers) require the use of number portability infrastructure to complete calls. Accordingly, virtually all calls of all customers in number portability areas or calls to number portability areas, intrastate and interstate, will require use of the number portability infrastructure.

Several parties contend that we have exclusive jurisdiction over number portability cost recovery.[6] Other parties contend that the States lack jurisdiction over some of the subclasses of "all telecommunications carriers" that are required to bear the cost of number portability.[7] Whether or not these broad propositions are true, we clearly have the power to determine in both the interstate and intrastate jurisdictions how "all telecommunications carriers" should bear the costs of implementing number portability in accordance with the requirements of the Act and our regulations issued under Section 251(b)(2).

We, of course, have plenary jurisdiction over interstate telecommunications services and providers and over number portability used in conjunction with interstate services.

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[6] See, e.g., SBC Ex Parte Letter From David F. Brown to William F. Caton, Acting Secretary, September 8, 1997; AT&T Ex Parte Letter From Frank S. Simone to William F. Caton, Acting Secretary, September 11, 1997.

[7] CTIA Ex Parte Letter From Wendy Chow to William F. Caton, Acting Secretary, August 11, 1997.

In addition, the Eighth Circuit's orders in Iowa Utilities Board and California confirm that Section 251(e) provides us with a direct and unambiguous grant of jurisdiction over the intrastate components of number portability, as well. The reverse proposition is not true for the States. The States do not have authority over interstate services or providers and have only limited authority over CMRS. Accordingly, only the FCC has the necessary jurisdiction to regulate "all telecommunications carriers" as to number portability.

* * *

V. THE COMMISSION HAS BROADLY EXERCISED ITS GRANT OF INTERSTATE AND INTRASTATE AUTHORITY IN ESTABLISHING UNIFORM NATIONAL RULES AND POLICIES FOR NUMBER PORTABILITY IMPLEMENTATION.

Under the Congressional directive that number portability be implemented in accordance with requirements prescribed by the Commission, we have promulgated rules that substantially determine the technology and timing of the service's deployment. First, although we have not mandated a specific number portability method, we have defined the technical attributes of number portability in a manner that, within the other requirements of the First Report and Order and the Memorandum Opinion and First Order on Reconsideration, effectively limits local exchange companies to the "local routing number" technology. First Report and Order at ¶ 38; Second Report and Order at ¶ 8.

In addition, we have precluded another technology that in conjunction with LRN was demonstrated to diminish costs (if in disputed amounts). Our First Report and Order precluded the "query-on-release" ("QOR") addition to LRN technology because we concluded that it violated several of our technical criteria for an acceptable number portability method. First Report and Order at ¶ 54. We reiterated this conclusion in our First Memorandum Opinion on a somewhat different basis. First Memorandum Opinion at ¶ 20. Because of questions about both the technical attributes of QOR and its purported cost savings, we determined that it was unacceptable as an alternative to deployment of LRN alone. First Memorandum Opinion at ¶ 41.

We have also defined with specificity the time within which all LECs must deploy number portability technology. We concluded that a fairly rapid implementation schedule was necessary to achieve the goals of the 1996 Act of promoting opportunities for facilities-leased competition. Nevertheless, we recognize that such a schedule is likely to increase the demand upon vendors of software and hardware and to drive up the market value of those items and their cost to carriers. We also recognize that our schedule for deployment has placed an additional strain upon the resources and talent of telecommunications carriers. As we set forth in the First Report and Order, although we adjusted somewhat the timing of deployment based upon concerns of network reliability, we retained full jurisdiction over the timing of deployment under Section 251(b)(2) and rejected suggestions that State Commissions be given authority to extend our deployment deadlines. First Order on Reconsideration at ¶¶ 90, 93.

We have also precluded the States from altering our planned deployment of number portability—even if the States chose to do so to diminish costs. As we concluded in the First Report and Order, "the 1996 Act directs this Commission to adopt regulations to implement number portability, and we believe it is important that we adopt uniform national rules regarding number portability implementation and deployment to ensure efficient and consistent use of number portability methods and numbering resources on a nationwide basis. Implementation of number portability, and its effect on numbering resources, will have an impact on interstate, as well as local, telecommunications services. Ensuring the interoperability of networks is essential for deployment of a national number portability regime, and for the prevention of adverse impacts on the provision of interstate telecommunications services or on the use of the numbering resource. We believe that allowing number portability to develop on a state-by-state basis could potentially thwart the intentions of Congress in mandating a national number portability policy, and could retard the development of competition in the provision of telecommunications services."

Thus, the national approach to number portability cost recovery under Section 251(e) that we adopt today is amply supported on the record through our national approach to number portability implementation under Section 251(b)(2) we have previously adopted in this docket.

* * *

VI. THE COMMISSION'S DETERMINATIONS IN THE SECOND REPORT AND ORDER HAVE CONTINUED ITS "NATIONAL-RULES" APPROACH TO NUMBER PORTABILITY DEPLOYMENT.

We took certain specific actions in the Second Report and Order intended to make uniform throughout the nation the deployment of number portability. First, consistently with the approach taken by the various voluntary regional groups of LECs and other carriers, in the Second Report and Order, we adopted the NANC's recommendation that a Number Portability Administration Center database be established for each of the original BOC regions so as to cover, collectively, the 50 states, the District of Columbia and the U.S. territories in the North American Numbering Plan Area. We also concluded that establishing a regional database for each of the original BOC regions, in particular, would provide numerous benefits. We concluded in the Second Report and Order that "specifically, deploying number portability databases by BOC region will: (1) build on the efforts of the LLCs, which already have chosen local number portability database administrators in each of the original BOC regions; (2) make use of the technical and organizational experience of the state-sponsored associations and workshops; and (3) minimize the cost and complexity of use of the databases by the BOCs." Accordingly, we concluded that establishing a database for each of the original BOC regions would serve the public interest. Second Report and Order at ¶ 21. We have precluded any alternative arrangements the States may subsequently believe appropriate.

We also adopted the NANC's recommendation that Lockheed Martin serve as local number portability database administrator for the Northeast, Mid-Atlantic, Midwest and Southwest regions, and that Perot Systems serve as the local number portability database administrator for the Southeast, Western and West Coast regions.

We found that the criteria utilized by the NANC in reviewing and evaluating the selection process employed by the various service providers at the regional level were sufficient to ensure that the number portability database administrators met the Commission's requirements. Second Report and Order at ¶ 33.

We also adopted the NANC recommendation that the carrier in the call routing process immediately preceding the terminating carrier, designated the "N-1" carrier,[8] be responsible for ensuring that database queries are performed. We also determined that the N-1 carrier can meet its obligation by either querying its own number portability database or by arranging with another entity to perform database queries on behalf of the N-1 carrier. Second Report and Order at ¶ 75.

In addition, we adopted the NANC's recommendation that it provide general oversight of number portability administration on an ongoing basis. Specifically, we established a procedure whereby parties may bring matters regarding number portability administration to the NANC so that it may recommend a resolution of those matters to the Commission. Although States may participate as parties in these proceedings, they were given no authority to decide them. Second Report and Order at ¶ 114.

We also adopted uniform national technical standards. We agreed with the NANC that the adoption of the uniform Functional Requirements Specification, Interoperable Interface Specification, Provisioning Process Flows, policy for the porting of reserved and unassigned numbers, and compliance and change management processes would provide significant advantages for the implementation of number portability. We concluded that uniform national standards in this area will promote efficient and consistent

[8] The "N" carrier is the entity terminating the call to the end user, and the "N-1" carrier is the entity transferring the call to the N, or terminating, carrier. See, *Architecture Task Force Report* at ' 7.8 and Attachment A -- "Example N-1 Call Scenarios."

use of number portability methods and numbering resources on a nationwide basis, ensure the interoperability of networks, and facilitate the ability of carriers to meet number portability implementation deadlines. We further concluded that uniform national standards should minimize expenditure of time and resources, maximize use of local number portability resources for all companies, produce timely and cost effective offers of local number portability related products, enable switch vendors to spread their costs over a larger base of customers, eliminate the need to develop several different versions of number portability software, and improve service quality for carriers providing service in multiple regions. In short, we adopted a comprehensive set of federal rules and left no authority to the States in these matters.

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VII. THE COMMISSION IS CONSTRAINED BY ITS OWN COMPETITIVE NEUTRALITY TEST IN PRESCRIBING A COST RECOVERY MECHANISM.

The Commission must uphold its own test of "competitive neutrality." We conclude that our failure to make appropriate cost recovery available to all carriers--but especially incumbent LECs who will incur the bulk of Type II costs and are the only carriers where rates are, for the most part, comprehensively regulated at both the federal and state level--would undermine competitive neutrality.

As we concluded in the First Report and Order, a competitively neutral cost recovery mechanism should not "give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber." As we concluded, the recovery mechanism should not have a disparate effect on the incremental costs of competing carriers seeking to serve the same customer. We concluded that our first criterion means that the incremental payment a new entrant makes for winning a customer that ports his or her number cannot put the new entrant at an appreciable cost disadvantage relative to any other carrier that could serve that customer. First Report and Order at ¶ 132.

We also concluded that a competitively neutral cost recovery mechanism should not "have a disparate effect on the ability of competing service providers to earn a normal return." We concluded in the First Report and Order that a carrier's share of the cost may not be so large, relative to the carrier's expected profits, that a new entrant would decide not to enter the market. We also conclude that this criterion cannot be read to permit the total number portability costs allocated to any other class of carrier, including the incumbent, to affect its year-to-year earnings in a material way.
First Report and Order at paras. 135.

In addition, in the First Report and Order, we interpreted the phrase "on a competitively neutral basis" to mean that the cost of number portability borne by each carrier must not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace. Our determination of the meaning "borne . . . on a competitively neutral basis" reflected the belief that Congress intended that competition should not be negatively impacted by the implementation of number portability. This is reflected in our determination that facilities-based competition should not be thwarted by a cost recovery mechanism that makes it economically infeasible for some carriers to utilize number portability when competing for customers served by other carriers. First Report and Order at ¶ 131.

We conclude, based upon these principles, that we should adopt a mechanism that provides for cost recovery. We also conclude that recovery should begin as soon as practicable, because carriers are incurring significant costs. We conclude that if we do not act expeditiously, a carrier's ability to earn a normal return in the year costs are incurred will be precluded, at least for incumbent LECs. Expense has been and will be incurred without a defined means of recovery. Delegation to the States without, at a minimum, specific direction, could have the same effect.

In addition, any failure to provide for incumbent LECs' number portability cost recovery could damage competition by depressing market prices for competitive services. Competitive LECs will have a share of number portability costs allocated to them, and the record reflects that they will incur comparatively small total number portability implementation costs themselves, whether they deploy their own facilities or avail themselves of the incumbent's data bases. To the extent that incubent LECs are hindered in their ability to recover the costs of implementing number portability, so too, will competitive LECs be hindered when they must price their unregulated services in competition with incumbent LEC services the prices of which may be artificially depressed by the inability to recover number portability costs. As we recognized in the First Report and Order, a new entrant's number portability costs must be included in "the price the new entrant must charge to serve . . . customer[s] profitably . . .." First Report and Order at ¶ 132. However, unless we provide for cost recovery for incumbent LECs, the ability of the new competitive LECs to enter the market and to compete aggressively for customers could be seriously undermined.

We also conclude that while the 1996 Act contemplates that local exchange carriers will be required to install number portability capabilities that may serve to facilitate competition, competitive neutrality is threatened where carriers are required to expend large sums for the benefit of competitors without contemporaneous cost recovery.

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IX-A. THE MECHANISM (INTERSTATE-ONLY RECOVERY)

Section 251(e)(2) of the 1996 Act states that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission" (emphasis added). We have, therefore, the duty to "determine" a competitively neutral method of number portability cost allocation. For the reasons discussed above, we conclude that we also have the authority to determine a competitively neutral system of cost recovery. We further conclude that we should exercise that authority to ensure that Congress' goal of a national system of number portability, developed and implemented pursuant to federal rules, is fully met.

As we have described in our discussion of costs that are allocable and recoverable, Type I and Type II number portability costs are new costs that are being incurred solely to facilitate the introduction of facilities-based competition in the local exchange. Nothing on the record suggests that the expenditure of Type I or Type II costs will permit those that incur the costs to provide any other new or profitable services. Moreover, we conclude that we have been granted authority via Sections 251(b)(2) and 251(e)(2) to ensure the viability of a competitive network of networks, a seamless telecommunications network that has fully deployed number portability. As we explained in the First Report and Order, this national deployment policy is amply justified under the express terms of the 1996 Act and in the record. All telecommunications carriers have the need to rely upon number portability technology to complete calls and the obligation to pay for it on a "competitively neutral" basis. We should, therefore, implement a federal cost recovery scheme.

There is significant dispute among the parties on the question of whether the costs of number portability are purely interstate or are separable into interstate and intrastate costs. As with the recovery of the cost of universal service support mechanisms for eligible schools, libraries, and rural health care providers, we believe our interstate approach to cost recovery minimizes any perceived jurisdictional difficulties.[9] Like the fund for eligible schools, libraries, and rural health care providers, number portability service is new and unique.

Because all N-1 telecommunications carriers, regardless of technology and regardless of location, will require the use of the LRN databases—whether or not they incur large Type I or Type II costs themselves—we conclude that Type I and Type II costs should be recovered through interstate rates only. We believe that this approach is most consistent with the intent of Congress to provide for number portability implemented pursuant to federal rules specified by this Commission. Having adopted the technical, timing, and cost allocation rules governing number portability, and leaving little or no discretion to the States in these matters, it could be inappropriate to fail to address the recovery of the costs we have, in effect, ordered to be incurred and allocated among carriers. Under our recovery mechanism, telecommunications carriers will be permitted, but not required, to pass through their Type I and Type II costs to their customers in the form of new service rate elements.

Unlike other services and functionalities that telecommunications carriers may deploy, we have limited carriers' ability to earn on their respective investments. Essentially, telecommunications carriers will be permitted to recoup their investments for number portability deployment, but no more, through the permitted new rate elements.

A. TYPE I ALLOCATION

We conclude that Type I costs should be allocated to all telecommunications carriers in a NPAC region based upon their end user telecommunications revenues, as we allocated the universal service support for eligible schools, libraries, and rural health care providers.[10] We leave it to the NANC to work out the details of and guidelines for the administration of this recovery mechanism. We suggest, however, that the NANC may decide to implement a

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[9] Universal Service Order at ¶¶ 837-40.
[10] Universal Service Order at ¶ 843.

mechanism that by the means of which: (1) the regional number portability administrator shall report the total Type I costs for each NPAC region; (2) the total regional Type I costs shall be divided by the total interstate and intrastate telecommunications revenues of all carriers in each region to arrive at an assessment per dollar of telecommunications revenue (the "Assessment Factor"); (3) all telecommunications carriers shall be assessed in arrears an amount equal to their total regional intrastate and interstate telecommunications revenues multiplied by the Assessment Factor; (4) if a carrier's assessment is more than the amount of Type I costs it has paid, the carrier shall remit the overage to the Administrator; and (5) if a carrier's assessment is less than the amount of Type I costs it has paid, the Administrator shall pay the carrier the shortfall. This example is illustrative only, and we expect that the NANC will make the processes as administratively streamlined as possible.

B. TYPE II ALLOCATION

We conclude that Type II costs should be borne by the telecommunications carrier that incurs them. However, in order to make this allocation competitively neutral, we authorize telecommunications carriers that incur Type II number portability costs to recover them pursuant to the mechanisms set forth below. Because all users will benefit from the competition enhanced by the implementation of number portability, our mechanisms permit, but do not require, carriers to pass through their costs to all of their customers of their interstate services in an equitable and nondiscriminatory fashion.

C. TYPE I AND II RECOVERY

We authorize a bifurcated structure of charges to recover Type I and Type II costs. The first category of charges that is authorized is a new service rate element that recovers number portability costs from all of a carrier's customers. These new rate elements will recover all number portability costs over a time period of not less than five years. This category of charges applies not only to retail customers of a carrier, but also to carriers that purchase, for instance, services for resale, unbundled network elements, and line-side access services. The second category of charges that is authorized may consist of per-query charges to N-1 carriers who elect to access another carrier's LNP database on a prearranged or default basis to complete their calls. In addition, this category of charges may include appropriate non-recurring charges.

We find on the record before us, subject to appropriate rate levels based upon cost support, that the interstate new service rate elements meet the strictures of Section 69.4(g) of our rules and are in the public interest.

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